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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65659; File No. SR-CBOE-2011-098)

October 31, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 17, 2011, the Chicago Board Options Exchange, Incorporated ( “Exchange” or “CBOE”) filed with the Securities and Exchange Commission ( “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend certain rules pertaining to Flexible Exchange Options (“FLEX Options”). The text of the proposed rule change is available on the Exchange’s website ([www.cboe.org/Legal](http://www.cboe.org/Legal)), at the Exchange’s Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices (referred to as “variable terms”).<sup>5</sup> For example, FLEX Options can have an expiration date that is any business day (specified as to day, month and year) with a maximum term of fifteen years.<sup>6</sup> The rules governing the trading of FLEX Options on the FLEX Request for Quote (“RFQ”) System platform are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are generally contained in Chapter XXIVB. Within each Chapter, the provisions pertaining to the variable terms of FLEX Options are generally contained in Rules 24A.4 and 24B.4.

The purpose of this proposed rule change is to reorganize and amend certain Exchange Rules pertaining to FLEX Options to provide within Chapters XXIVA and XXIVB that a new series of FLEX Options may be established on any business day prior to the expiration date. The adding of new FLEX Equity Options series on any business day prior to the expiration date is

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<sup>5</sup> FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17.

<sup>6</sup> See Rule 24A.4(a)(2)(iv) and (a)(4)(i), and Rule 24B.4(a)(2)(iv) and (a)(5)(i).

already addressed in Rule 5.5 of Chapter V of the Exchange Rules.<sup>7</sup> In an effort to make reading and understanding the FLEX Option provisions easier, the Exchange is proposing to move this new series add provision from Rule 5.5 of Chapter V to Rules 24A.4 and 24B.4 of Chapters XXIVA and XXIVB, respectively. In addition, the Exchange is proposing to apply the provision to all FLEX Options (not just FLEX Equity Options).<sup>8</sup> Previously the rules did not clearly address the applicability of any such provision to other FLEX Options. However, it has been the Exchange's practice to permit other FLEX Options to be listed any business day prior to the expiration date.

The Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

## 2. Statutory Basis

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<sup>7</sup> Rule 5.5 generally sets forth provisions pertaining to series of options that may be open for trading on the Exchange and generally pertains to option contracts that are not FLEX Options. However, Rule 5.5.04 currently provides as follows: "New series of options on an individual stock may be added until the beginning of the month in which the option contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until five business days prior to expiration. Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date."

<sup>8</sup> Specifically, the Exchange is proposing to delete the following sentence from Rule 5.5.04: "Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date." And, the Exchange is proposing to add the following sentence to both Rule 24A.4(a)(1) and 24B.4(a)(1): "A new series of FLEX Options may be established on any business day prior to the expiration date as provided for in this Rule [24A.4 or 24B.4, as applicable]."

The proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-098 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2011-098 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).